

PROGRESS REPORT NO. 20

**MICHIGAN COURT OF APPEALS
DELAY REDUCTION PLAN**

April 11, 2007

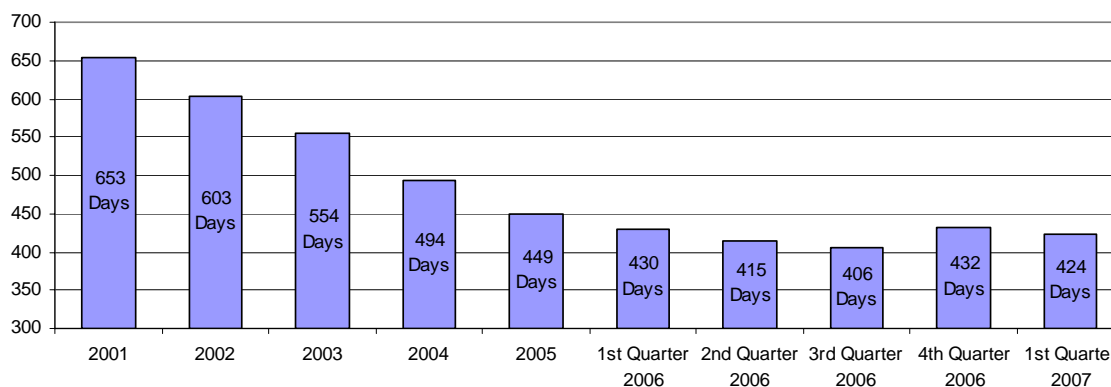
William C. Whitbeck
Chief Judge
Michigan Court of Appeals

I. EXECUTIVE SUMMARY

In March of 2002 the Michigan Court of Appeals adopted a long-range goal of disposing of 95% of all appeals filed with it within 18 months of filing, commencing with those cases filed on and after October 1, 2003. Since the Preliminary Report that signaled the inception of the Court's delay reduction plan, the Court has made important progress toward achieving that goal and has issued nineteen Progress Reports documenting that progress. Attached is Progress Report No. 20 that sets out data covering the first quarter of 2007.

As shown below, during the fourth quarter of 2006 and the first quarter of 2007, the Court's delay reduction effort has stalled. Indeed, the Court's average time to decide opinion cases *increased* in the fourth quarter of 2006 and decreased only slightly in the first quarter of 2007. This situation is directly and simply a result of the staff shortages caused by the budget situation for FY 2007.

Overall Time In Processing



Obviously, the later part of 2006 and the first part of 2007 have been difficult periods for delay reduction at the Court of Appeals. The Court's FY 2006 and 2007 budgets have compromised its delay reduction effort. Approximately 90% of the Court's costs relate to personnel. Due to required reductions in personnel, the Court has been unable to maintain the staffing levels necessary to continue to reduce the time it takes to process cases in a timely fashion. Indeed, as the attached chart shows, a significant portion of the nearly \$5 million in cost savings that the Court has been able to achieve from FY 2003 through FY 2007, year-to-date, have been in the area of personnel costs, in particular through the mechanism of holding authorized positions vacant.

The Court remains committed, however, to accomplishing its core mission. That mission is a dual one: to decide the cases that come before us with due deliberation and due speed. The Court has no other mission. It does not provide services (other than information to the litigants); it does not make grants; it does not carry out programs; it does not engage in administrative functions relating to other elements of the judiciary; it does not undertake educational or training programs (other than internally); and its work product is strictly limited to the opinions and orders that we produce. With respect to those opinions and orders, the Court's first obligation is to get them right and its second obligation is to get them out. Despite the budget situation, the court will continue to do its very best to carry out these dual missions over the coming months.

Cost Savings Measures At The Court Of Appeals

	<u>FY2003</u>	<u>FY2004</u>	<u>FY2005</u>	<u>FY2006</u>	<u>FY2007</u>	<u>TOTAL</u>
Change Health Insurance to State Plan	\$255,000	\$255,000	\$255,000	\$255,000	\$255,000	\$1,275,000
Eliminate Cell Phones for Judges		\$10,000	\$10,000	\$10,000	\$10,000	\$40,000
Eliminate Department Vehicles (Admin & IS)	\$3,000	\$6,000	\$9,000	\$9,000	\$9,000	\$36,000
Reduce Electronic Research Contract		\$20,000	\$20,000	\$20,000	\$20,000	\$80,000
Change Law Books to MCLS from MCLA	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$300,000
Discontinue MCLS Updates (pocket parts)		\$60,000	\$60,000	\$60,000	\$60,000	\$240,000
Reduce from 100 MCLS sets to 40 MCLA sets					\$34,000	\$34,000
Other Library Reductions		\$36,000	\$76,000	\$96,000	\$0	\$208,000
Eliminating Judicial Out-of-State Travel	\$15,000	\$15,000	\$15,000	\$15,000	\$15,000	\$75,000
Held Vacancies - Clerk's Office			\$58,000	\$120,000	\$184,800	\$362,800
Held Vacancies - Research Division				\$285,760	\$415,000	\$700,760
Unpaid Furlough Day		\$40,000				\$40,000
Judicial Stationery Reductions		\$800	\$800	\$800	\$800	\$3,200
Eliminate Maintenance Contracts		\$23,000	\$38,000	\$38,000	\$38,000	\$137,000
Plan A Savings		\$87,500	\$93,000	\$73,400	\$84,300	\$338,200
FY2004 Lump Sum Instead of COLA 3%		\$0	\$300,000	\$300,000	\$300,000	\$900,000
FY2006 Lump Sum Instead of COLA 2%				\$0	\$220,000	\$220,000
TOTAL	\$333,000	\$613,300	\$994,800	\$1,342,960	\$1,705,900	\$4,989,960

II. OVERVIEW

A. Statement of the Problem

In 2001, the Court disposed of approximately 7,600 cases, 3,100 by opinion and the rest by order. On average, the Court disposed of these opinion cases in 653 days from the date of filing. The Judges of the Court unanimously determined that this time frame was not within acceptable limits and adopted a comprehensive delay reduction plan on March 8, 2002. The Court has subsequently issued nineteen progress reports detailing its progress on this plan. This twentieth progress report covers the first quarter of 2007. All of the progress reports are available on the Court's website at <http://courtofappeals.mijud.net/resources/drwg.htm>.

B. Goals and Objectives

1. Long-Range Goal

The Court's delay reduction plan involves an overall long-range goal and two shorter-term objectives designed to meet that goal. The long-range goal is to dispose of 95% of all the Court's cases within 18 months of filing, commencing with those cases filed on or after October 1, 2003.

2. First Short-Term Objective

To achieve its long-range goal, the Court determined that it must first reduce the average time it takes to process an opinion case through the Court from its 2001 level of 653 days to approximately 497 days. To achieve this reduction, the Court has taken a three-pronged approach: *First*, the Court set very aggressive targets for disposing of cases once they reach the Judicial Chambers. *Second*, the Court, through a number of mechanisms, set equally aggressive targets for moving cases more quickly out of the Warehouse, primarily by moving these cases directly into the Judicial Chambers at a considerably accelerated pace. *Third*, the Court proposed a number of changes in the court rules to shorten the time in Intake. The Court designed these actions to take effect over the summer and fall of 2002 through the commencement of FY 2004 on October 1, 2003. In the first quarter of 2007 the average time to process an opinion case through the Court was 424 days. The Court has therefore achieved its first short-term objective.

3. Second Short-Term Objective

Reducing the overall average processing time for opinion cases from its 2001 level of 653 days to approximately 424 days will not, however, permit the Court to meet its long-range goal of disposing of 95% of all cases within 18 months of filing. To achieve this long-range goal, the Court must reduce its overall average processing time for opinion cases to approximately 300 days. The Court has not yet achieved its second short-term objective. To achieve that objective, the Court must eliminate or substantially reduce the time that opinion cases wait in Warehouse or take other appropriate action.

III. RESULTS IN THE FIRST QUARTER OF 2007 AS COMPARED TO FIRST OBJECTIVE

A. Processing Times of Opinion Cases

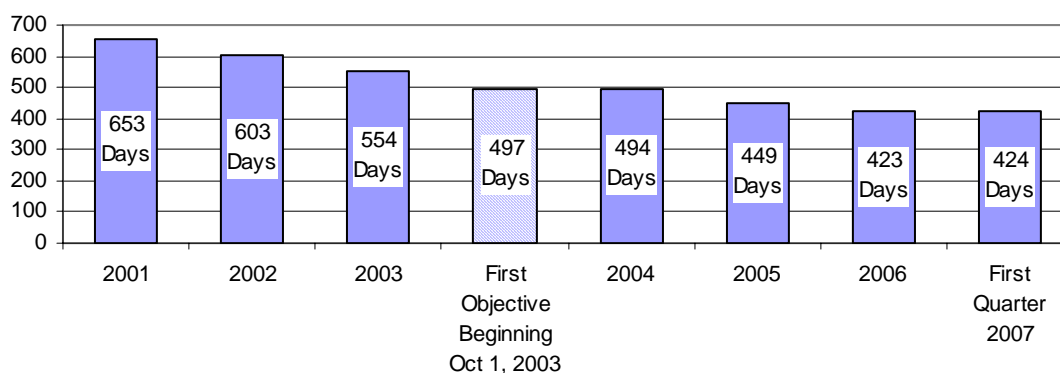
1. Overall

As Chart 1 shows, in 2001 the Court took 653 days on average to dispose of an opinion case. In the first quarter of 2007 this time was 424 days. Graph 1 shows these reductions on a comparative basis and relates them to the Court's first objective. As Graph 1 shows, the Court has exceeded its first objective.

Chart 1

	2001	2002	2003	2004	2005	2006	1 st Quarter 2007
Intake	260	240	235	228	203	182	188
Warehouse	271	261	225	167	146	159	157
Research	61	62	64	68	70	52	41
Judicial Chambers	61	40	30	31	30	30	38
Totals	653	603	554	494	449	423	424

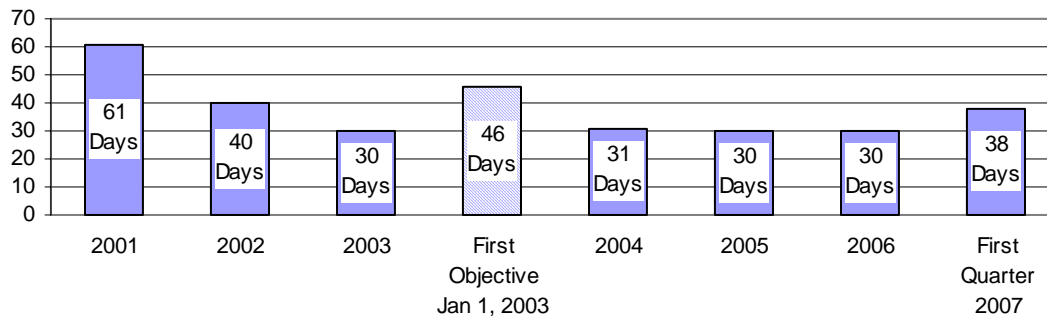
Graph 1
Overall Time In Processing Compared To First Objective



2. Judicial Chambers

Graph 2 shows that in 2001 for those cases disposed of by opinion the average time spent in the Judicial Chambers was 61 days. In the first quarter of 2007 this time was 38 days. As Graph 2 shows, the Court has more than met its first objective.

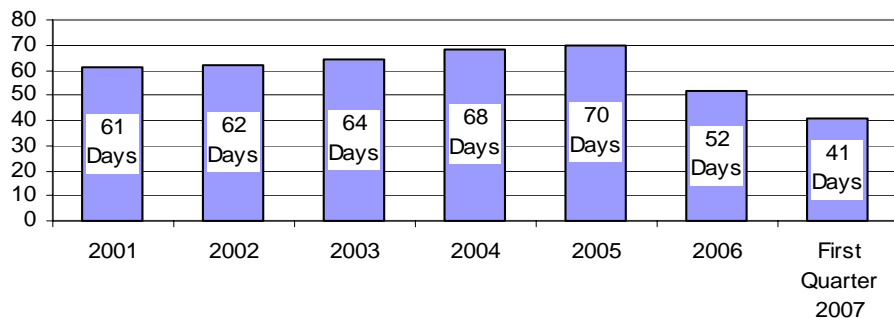
Graph 2
Processing Time In Judicial Chambers Compared To First Objective



3. Research

As Graph 3 shows, in 2001 for those cases disposed of by opinion the average time spent in the Research Division was 61 days. In the first quarter of 2007 it was 41 days. Graph 3 shows these times on a comparative basis.

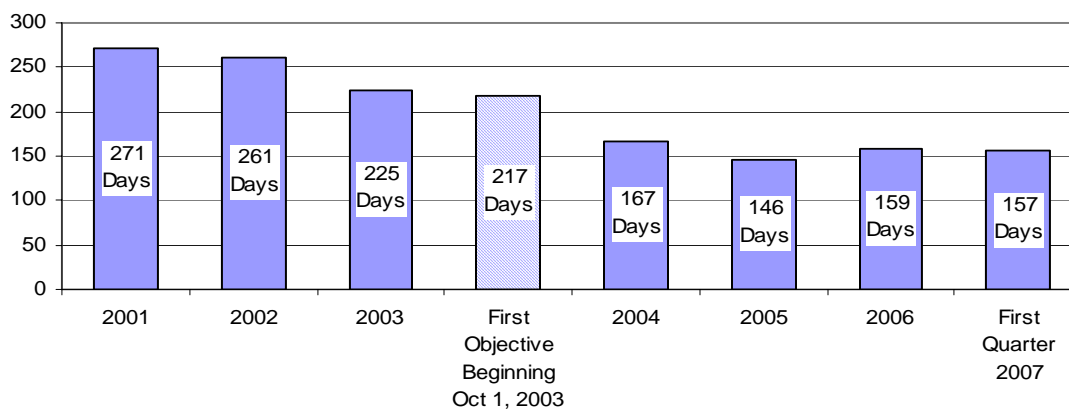
Graph 3
Processing Time In Research



4. Warehouse

Graph 4 shows that in 2001 for those cases disposed of by opinion the average time spent in the Warehouse was 271 days. In the first quarter of 2007 this time was 157 days. Graph 4 shows these reductions on a comparative basis and relates them to the Court's first objective. As Graph 4 shows, the Court exceeded its first objective.

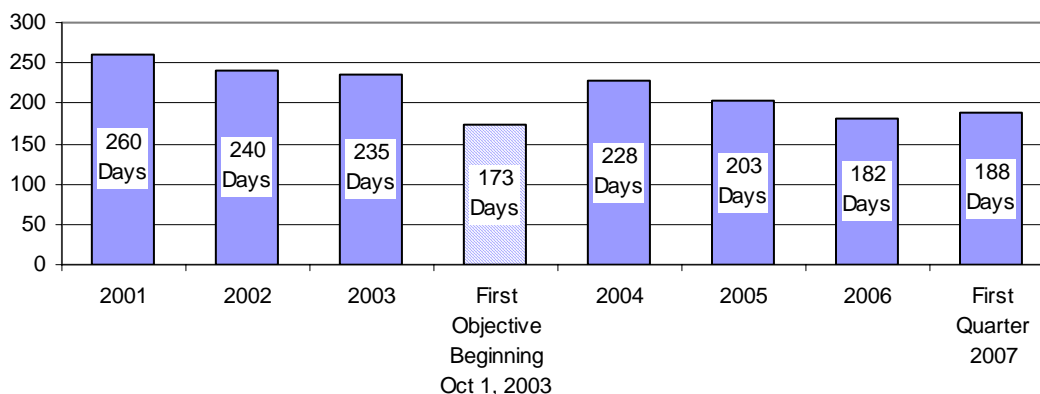
Graph 4
Processing Time In The Warehouse Compared To First Objective



5. Intake

Graph 5 shows that in 2001 for those cases disposed of by opinion the average time spent in Intake was 260 days. In the first quarter of 2007 this time was 188 days. Graph 5 shows these reductions on a comparative basis and relates them to the Court's first objective. As Graph 5 shows, the Court has yet to meet its first objective in this stage.

Graph 5
Processing Time In Intake Compared To First Objective



IV. RESULTS IN THE FIRST QUARTER OF 2007 AS COMPARED TO PREVIOUS QUARTERS

A. Processing Times of Opinion Cases

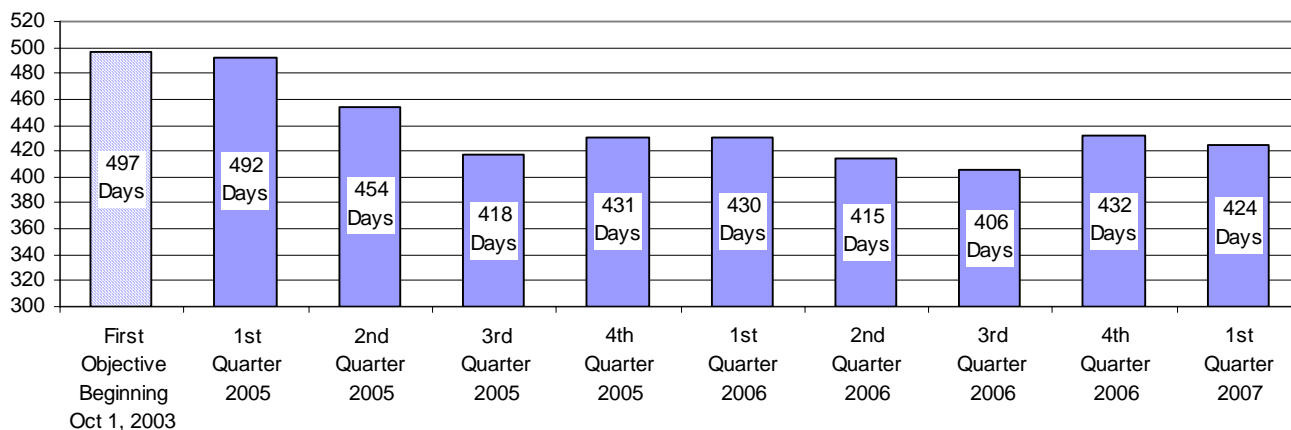
1. Overall

Chart 2 shows that in the first quarter of 2005 the Court took 492 days to dispose of an opinion case. In the first quarter of 2007 this time was 424 days. Graph 6 shows these reductions on a comparative basis and relates them to the Court's first objective. As the chart and the graph show, the Court actually regressed during the fourth quarter of 2006 and the first quarter of 2007, although it did continue to meet its first objective.

Chart 2
Processing Time For Opinion Cases

	1 st Qtr 2005	2 nd Qtr 2005	3 rd Qtr 2005	4 th Qtr 2005	1 st Qtr 2006	2 nd Qtr 2006	3 rd Qtr 2006	4 th Qtr 2006	1 st Qtr 2007
Intake	225	211	182	192	172	180	175	198	188
Warehouse	166	148	134	137	167	159	152	155	157
Research	68	68	70	74	65	47	46	47	41
Judicial Chambers	33	27	32	28	26	29	33	32	38
Totals	492	454	418	431	430	415	406	432	424

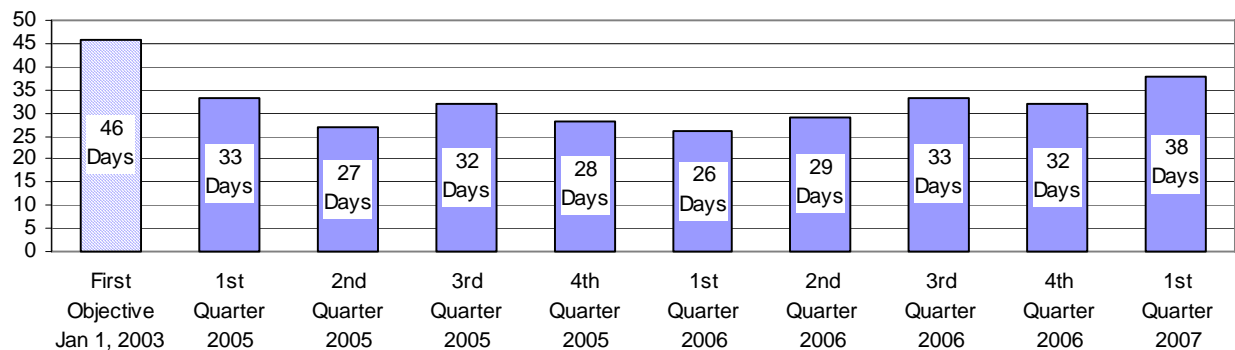
Graph 6
Overall Time In Processing Compared To First Objective



2. Judicial Chambers

Graph 7 shows that in the first quarter of 2005, for those cases disposed of by opinion, the average time spent in the Judicial Chambers was 33 days. In the first quarter of 2007 this time was 38 days. Graph 7 shows those reductions on a comparative basis and relates them to the Court's first objective. As the graph shows, the Court continued to meet its first objective for the Judicial Chambers.

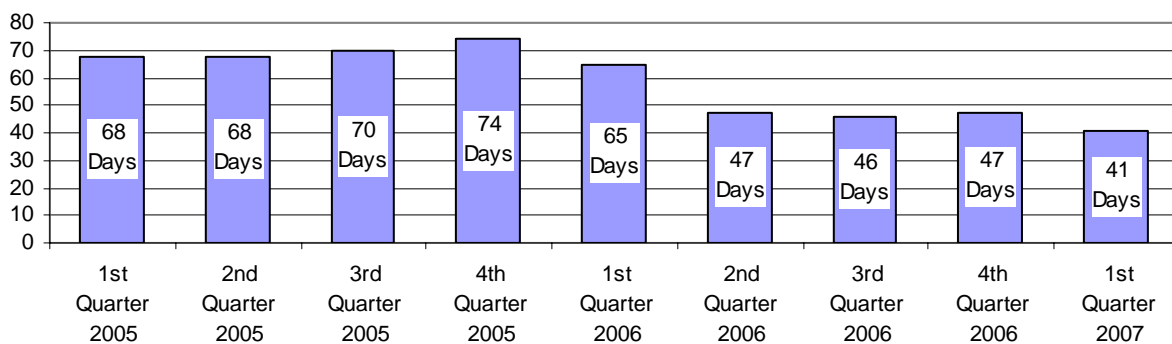
Graph 7
Processing Time In Judicial Chambers Compared To First Objective



3. Research

Graph 8 shows that for the first quarter of 2005, for those cases disposed of by opinion, the average time spent in the Research Division was 68 days. In the first quarter of 2007 this time was 41 days.

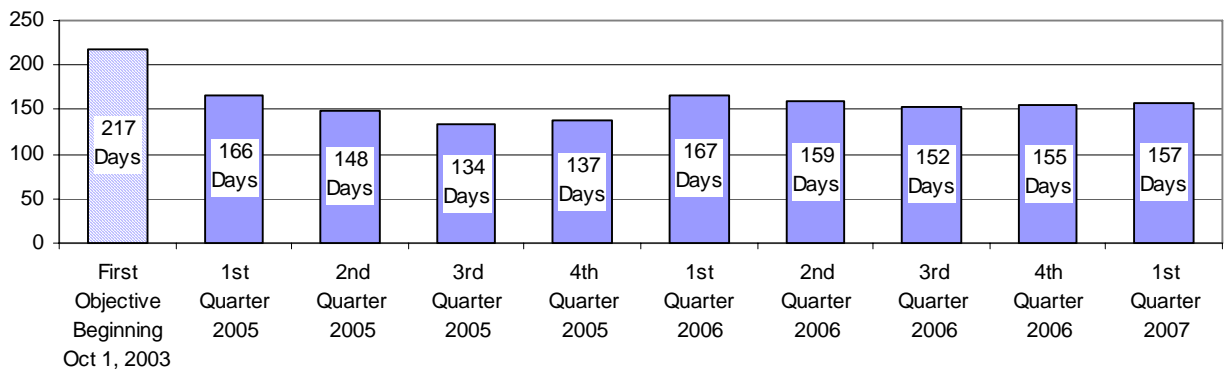
Graph 8
Processing Time In Research



4. Warehouse

Graph 9 shows that in the first quarter of 2005, for those cases disposed of by opinion, the average time spent in the Warehouse was 166 days. In the first quarter of 2007 this time was 157 days. Graph 9 shows these reductions on a comparative basis and relates them to the Court's first objective. As the graph shows, the Court actually regressed during the fourth quarter of 2006 and the first quarter of 2007, although it did continue to meet its first objective for the Warehouse.

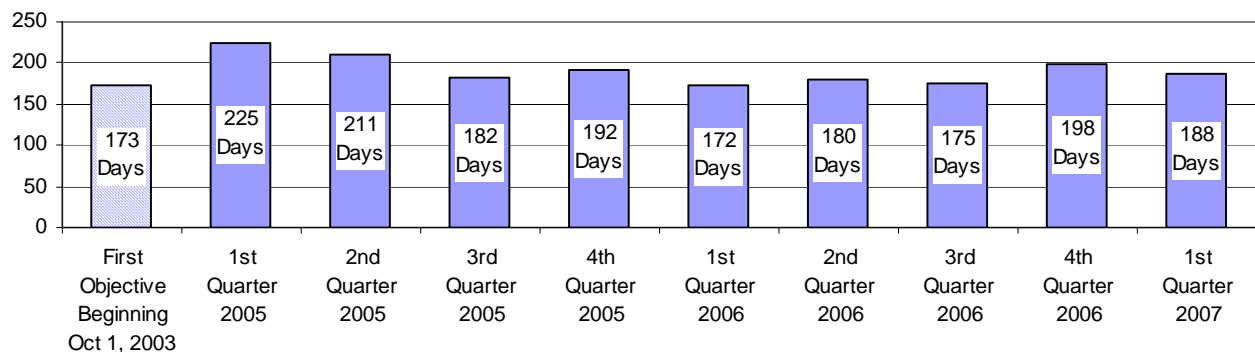
Graph 9
Processing Time In The Warehouse Compared To First Objective



5. Intake

Graph 10 shows that in the first quarter of 2005, for those cases disposed of by opinion, the average time spent in Intake was 225 days. In the first quarter of 2007 this time was 188 days. Graph 10 shows those reductions on a comparative basis and relates them to the Court's first objective. As the graph shows, in the first quarter of 2007 the Court did not meet its first objective for Intake.

Graph 10
Processing Time In Intake Compared To First Objective



B. Case Differentiation

Charts 3 through 8 show the overall situation for cases that the Court disposed of by opinion for the years of 2001, 2002, 2003, 2004, 2005, and 2006, respectively, arrayed according to major case types. Chart 9 arrays the same data for the first quarter of 2007.

Chart 3
2001

	Overall Average	Regular/ Complex	Summary Panel	Non-Expedited	Expedited	Custody/TPR
Intake	260	271	229	280	192	187
Warehouse	271	290	214	331	60	56
Research	61	61	62	63	56	52
Judicial Chambers	61	72	27	66	43	30
Total	653	694	532	740	351	325

Chart 4
2002

	Overall Average	Regular/ Complex	Summary Panel	Non-Expedited	Expedited	Custody/TPR
Intake	240	254	205	255	178	178
Warehouse	261	290	189	312	58	56
Research	62	59	69	61	66	67
Judicial Chambers	40	49	19	44	26	20
Total	603	652	482	672	328	321

Chart 5
2003

	Overall Average	Regular/ Complex	Summary Panel	Non-Expedited	Expedited	Custody/TPR
Intake	235	244	212	251	166	167
Warehouse	225	253	154	271	28	27
Research	64	63	64	63	66	67
Judicial Chambers	30	36	16	33	18	14
Total	554	596	446	618	278	275

Chart 6
2004

	Overall Average	Regular/ Complex	Summary Panel	Non- Expedited	Expedited	Custody/TPR
Intake	228	241	201	249	134	131
Warehouse	167	175	150	198	29	28
Research	68	73	59	71	55	55
Judicial Chambers	31	34	25	33	22	21
Total	494	523	435	551	240	235

Chart 7
2005

	Overall Average	Regular/ Complex	Summary Panel	Non- Expedited	Expedited	Custody/TPR
Intake	203	221	173	219	133	132
Warehouse	146	140	157	175	20	15
Research	70	79	55	73	56	56
Judicial Chambers	30	31	29	31	26	24
Total	449	471	414	498	235	227

Chart 8
2006

	Overall Average	Regular/ Complex	Summary Panel	Non- Expedited	Expedited	Custody/TPR
Intake	182	194	158	195	122	122
Warehouse	159	167	143	183	48	49
Research	52	64	30	57	30	28
Judicial Chambers	30	32	26	32	21	20
Total	423	457	357	467	221	219

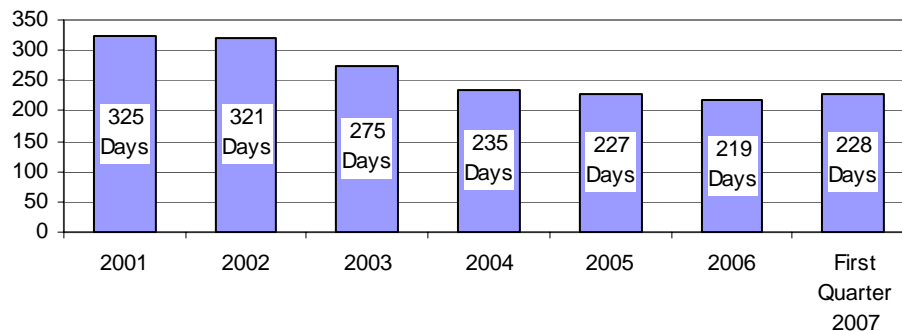
Chart 9
First Quarter 2007

	Overall Average	Regular/Complex	Summary Panel	Non-Expedited	Expedited	Custody/TPR
Intake	188	206	156	202	126	123
Warehouse	157	173	129	179	58	52
Research	41	53	21	44	31	28
Judicial Chambers	38	37	38	39	31	25
Total	424	469	344	464	246	228

C. Dependency Appeals

The Court has also focused special attention on dependency appeals. These appeals arise from trial court orders terminating parental rights (TPR) and deciding custody issues involving minor children in domestic relations cases. In 2001 it took 325 days, on average, to dispose of such cases by opinion. As Chart 9, above, shows, the Court reduced this time to 228 days in the first quarter of 2007. Of that time, 123 days were spent in the Intake stage. The combined time for all other stages was 105 days, including only 25 days in the Judicial Chambers. Graph 11 shows the situation with respect to dependency appeals beginning in 2001.

Graph 11
Dependency Appeals



D. Case Age

As noted above, the Court decides a mix of cases, some by opinion and some by order. The Court's overall goal is to decide 95% of its cases within 18 months of filing (see Chart 10, below). While the Court is gratified at the increase of the percentage of cases that are 18 months old or less at disposition, the Court still must make considerable progress if it is to meet its long-term goal of deciding 95% of all cases within 18 months of filing.

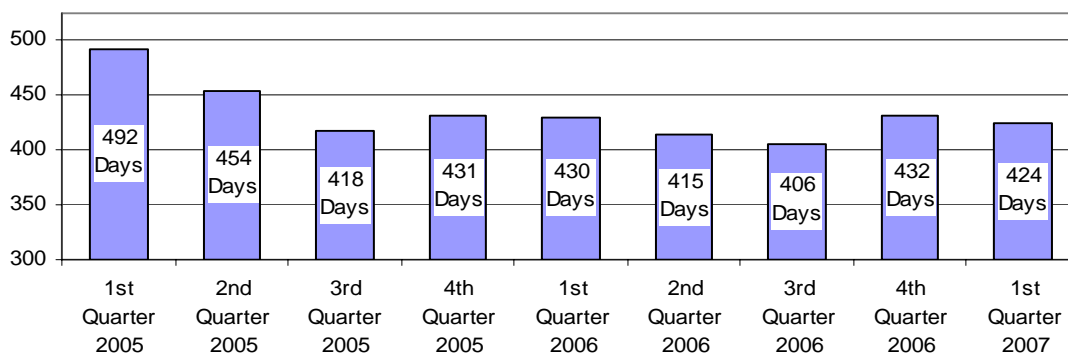
Chart 10
Percentage of Cases 18 Months Old Or Less At Disposition

Case Type	2001	2002	2003	2004	2005	2006	First Quarter 2007
Opinion	25.03%	33.31%	46.59%	67.01%	68.80%	68.26%	75.13%
Order	x ¹	97.36%	97.70%	98.30%	99.14%	99.37%	99.49%
All	y ¹	66.92%	74.43%	83.85%	86.19%	86.30%	88.63%

E. The Recent Regression

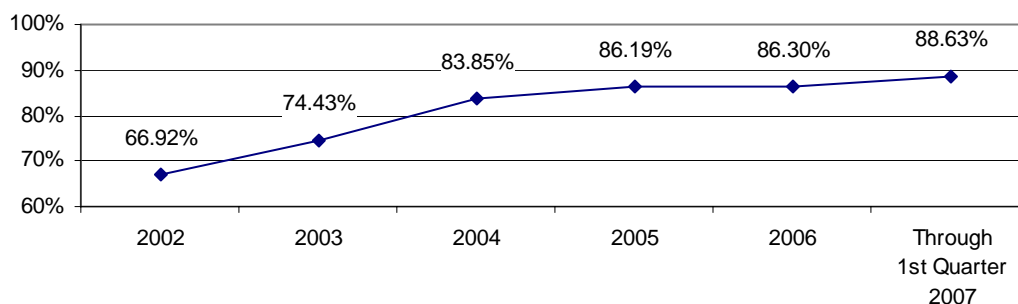
In terms of the average age of cases that it decides, the Court's progress on delay reduction actually regressed in the last two quarters, as Graph 12 shows.

Graph 12
Overall Time In Processing
Quarter-to-Quarter Comparison



The level of dispositions within 18 months remains significant in comparison to the disposition levels in prior years, as Graph 13 shows:

Graph 13
Percentage Of Cases 18 Months Old Or Less At Disposition



¹ These data are not readily available from the Court's database.

V. AREAS OF MAJOR CONCERN

A. Staffing Levels in the Research Division

The Court recognized in March of 2002 that, given existing budget constraints, it could not realistically expect to add new attorneys to its Research Division in either FY 2002 or FY 2003. Indeed, the Court actually experienced significant budget *reductions* during both of these fiscal years. Nevertheless, to meet its overall goal of disposing of 95% of all appeals within 18 months of filing, the Court recognized that it had to further accelerate the disposition of cases decided by opinion. In the presentation of its budget request for FY 2004, the Court emphasized that, to meet this goal, it needed to add attorneys to its Research Division to drastically reduce or eliminate the Warehouse.

Fortunately, there was almost universal recognition of this urgent need. As part of an overall package of fee increase bills originated by the Supreme Court, supported by the Executive Branch, enacted by the Legislature, and signed by the Governor, the Court received approximately \$525,000 more in revenues in FY 2004 from entry and motion fees than it received in FY 2003. These funds allowed the Court to *increase* its Research Division staff in FY 2004 and to continue the higher staffing levels in FY 2005.

However, the Judiciary budgets for FY 2006 and FY 2007 were not good ones for the Court of Appeals. The net effect is that the Court, through holding vacancies open and through attrition, is *reducing* its staffing levels. Inevitably, this has meant that the Court's delay reduction efforts were less effective, with the primary effect being felt in the last quarter of 2006. Chart 11 shows the decline of full time employees in the Court's Senior Research and Prehearing Offices over the last several years.

Chart 11
Full Time Employees in Senior Research and Prehearing

1st Q of	Full Time Employees	
	Sr. Research	Prehearing
2000	24.10	29.90
2001	22.79	27.69
2002	16.35	32.16
2003	20.53	27.84
2004	13.39	34.36
2005	14.48	27.70
2006	14.73	30.68
2007	14.88	26.74

B. Summary Disposition Fast Track

As noted above, in 2001 an opinion case spent 260 days on average in Intake. In 2002 that average time was 240 days, in 2003 it was 235 days, in 2004 it was 228 days, in 2005 it was 203 days, and in 2006 it was 182 days. In the first quarter of 2007 this time was 188 days. The Court initially proposed to reduce the time a case spends in Intake to 173 days on average for those cases filed on or after October 1, 2003. The Court expected to meet that objective through adoption of the various changes to the court rules. These proposed changes remain under consideration by the Michigan Supreme Court. Pending a decision on those changes, a Case

Management Work Group comprised of members from the Supreme Court, the Court of Appeals, and the Bar developed a plan for the management of appeals from summary disposition orders, the so-called summary disposition fast track or “rocket docket” plan. On October 5, 2004, the Supreme Court approved the plan in Administrative Order No. 2004-5. Pursuant to the administrative order, the Court of Appeals began implementation of the plan on January 1, 2005. In late 2005, the Work Group proposed amendments to the plan and the Supreme Court adopted Amended Administrative Order 2004-5 effective January 1, 2006.

The Court now has 24 months of experience with the summary disposition fast track, 12 months under the original plan and 12 months under the modified plan. The Case Management Work Group has recommended that the program be continued for another year, but with significant modification. See the Case Management Work Group 18-Month Report and letter, which can be found along with all of the Case Management Work Group reports, at <http://courtofappeals.mjud.net/resources/cmwg.htm>. The Supreme Court has adopted the Case Management Work Group’s recommendations in its Second Amended Administrative Order 2004-5, effective January 1, 2007. See <http://courts.michigan.gov/supremecourt/Resources/Administrative/2004-5-Amended.pdf>.

C. Waltz/Wyse Cases

The Court has experienced an increase in the average times for disposition of cases in early 2007 as the Court disposes of approximately 60 medical malpractice cases that were held in abeyance pending decisions by conflict panels in *Mullins v St Joseph Mercy Hosp*, 271 Mich App 503; 722 NW2d 666 (2006), lv gtd (April 4, 2007), and *Ward v Siano, MD*, 272 Mich App 715; ___ NW2d ___ (2006), lv pending. In many of those cases, the abeyance orders were issued eight to ten months before *Mullins* and *Ward* were decided. As a result, the cases will skew upward the average times for disposition when they are released in 2007.

V. CONCLUSIONS

On March 8, 2002, the Judges of the Court of Appeals adopted the ambitious goal of disposing of 95% of all its appeals within 18 months of filing. The Court’s delay reduction plan, with the exception of changes to the court rules that will reduce the time a case spends in Intake, commenced on an overall basis in July of 2002. In the first quarter of 2007:

- The Court reduced the average overall time it takes to dispose of an opinion case from the 2001 level of 653 days to 424 days. The Court’s first objective was to reduce the time it takes to dispose of an opinion case to 497 days commencing fully on October 1, 2003. The Court therefore has exceeded its first objective.
- The Court reduced the average time a case spends in the Judicial Chambers from the 2001 level of 61 days to 38 days. The Court’s first objective was to reduce the time it takes to dispose of an opinion case to 46 days in the Judicial Chambers. The Court therefore has exceeded its first objective.
- The Court reduced the average time a case waits in the Warehouse from the 2001 level of 271 days to 157 days. The Court’s objective was to reduce the wait in the Warehouse to 217 days by October 1, 2003. The Court therefore has exceeded its first objective.

- The average time a case spends in Intake has been reduced from the 2001 level of 260 days to 188 days. The Court's objective was to reduce the time in Intake to 173 days commencing with the cases filed on or after October 1, 2003. The Court therefore has not met its first objective.
- The Court has reduced the average overall time it takes to process dependency appeals from the 2001 level of 325 days to 228 days.

Chart 12 summarizes the Court's progress toward meeting its first objective.

Chart 12
October 2003 Objective

	2001	2002	2003	2004	2005	2006	First Quarter 2007	Improvement To Date	First Objective	Improvement Needed To Meet First Objective
Intake	260	240	235	228	203	182	188	72	173	15
Warehouse	271	261	225	167	146	159	157	114	217	(60)
Research	61	62	64	68	70	52	41	20	61	(20)
Judicial Chambers	61	40	30	31	30	30	38	23	46	(8)
Total	653	603	554	494	449	423	424	229	497	(73)

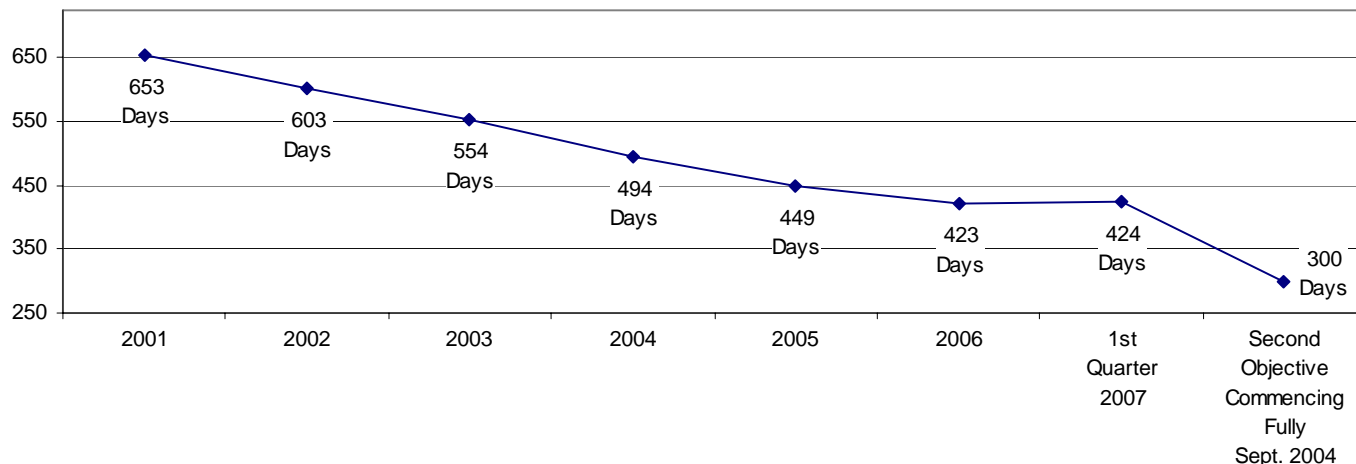
Chart 13 summarizes the additional progress that will be needed to meet the Court's second objective of reducing the average time it takes to dispose of an opinion case from the 2001 level of 653 days to approximately 300 days commencing fully in September of 2004.

Chart 13
September 2004 Objective

	2001	2002	2003	2004	2005	2006	First Quarter 2007	Improvement To Date	Second Objective	Improvement Needed To Meet Second Objective
Intake	260	240	235	228	203	182	188	72	173	15
Warehouse	271	261	225	167	146	159	157	114	0	157
Research	61	62	64	68	70	52	41	20	61	(20)
Judicial Chambers	61	40	30	31	30	30	38	23	46	(8)
Total	653	603	554	494	449	423	424	229	280	144

Graph 14 illustrates the situation from a different perspective, showing the Court's starting point in 2001, the progress the Court made through 2002, 2003, 2004, 2005, 2006, and the first quarter of 2007, and the second objective that was intended to commence fully in September of 2004.

Graph 14
Progress Toward Objectives



2006 and the first quarter of 2007 was a difficult period for delay reduction at the Court of Appeals. The Court's overall goal is to decide 95% of its cases within 18 months of filing. However the Court's FY 2006 and FY 2007 budgets have, along with other factors, compromised our delay reduction effort. Approximately 90% of the Court's costs relate to personnel. Due to required reductions in personnel, the Court has been unable to maintain the staffing levels necessary to continue to reduce the time it takes to process cases in a timely fashion.

The Court remains committed, however, to accomplishing its core mission. That mission is a dual one: to decide the cases that come before us with due deliberation and due speed. We have no other mission. We do not provide services (other than information to the litigants); we do not make grants; we do not carry out programs; we do not engage in administrative functions relating to other elements of the judiciary; we do not undertake educational or training programs (other than internally); and our work product is strictly limited to the opinions and orders that we produce. With respect to those opinions and orders, our first obligation is to get them right and our second obligation is to get them out. Despite the budget situation, we will continue to do our very best to carry out these dual missions over the coming months.